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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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DICKE, BILLIG & CZAJA, P.L.L.C. FIFTH STREET TOWERS 100 SOUTH FIFTH STREET, SUITE 2250 MINNEAPOLIS, MN 55402			VAN DOREN, BETH	
			ART UNIT	PAPER NUMBER
			3623	

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Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/840,332

Applicant(s)

HAMMANN, JERALD A.

Examiner

Beth Van Doren

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a Final office action in response to communications received 12/26/05. Claims 31-35 have been amended. Claims 36-40 have been added. Claims 31-40 are now pending in this application.

Response to Amendment

2. Applicant's remarks and amendments are sufficient to overcome the 35 U.S.C. § 101 rejections set forth in the previous office action.

Response to Arguments

3. Applicant's remarks concerning the provisional double patenting rejection have fully considered, but they are not persuasive. Examiner points out that this is a **provisional** rejection because the conflicting claims have not in fact been patented. The rejection is to put the applicant on notice that if one of co-pending applications 09/999,378 and 09/840,332 (current application) issues, the other co-pending application would stand subject to a double patenting rejection, as the claims are currently recited. Double patenting rejections are based on conflicting claims between issued patent claims and pending claims, and therefore issue dates and not filing dates determine precedence in a double patenting rejection. Since Examiner does not know which application, if any, will be issued first, the provisional double patenting rejection is proper and will be asserted in both applications.

Therefore, the provisional double patenting rejection has been reasserted below.

6. Applicant's arguments with respect to claims 31-35 have been considered but are moot in view of the new grounds of rejection, as necessitated by amendment.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 31, 32, 33, 34, 35, and 36-40 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 7, 12, 17, 22, and 66-70 of copending Application No. 09/999,378. Although the conflicting claims are not identical, they are not patentably distinct from each other because the only modifications between the claims are the timing of the communications and the intention of the communications. With regards to claim 31 of the current application, claim 31 recites "accepting, via computer, transaction parameter values" which is not recited in claim 1 of the copending application. Both claims recite in the preamble that the method is a computer-based method. Therefore, this "via computer" limitation of claim 31 is merely reciting aspects of the preamble in the body of the claim. Therefore, modifying the current application to include that the transaction parameters are accepted via a computer is respectfully considered obvious to one of ordinary skill in the art at the time of the invention. Further, claim 31 of the current application recites "wherein the at least one service date and service time is a date and/or time

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measure indicating a present or future first date and/or time when the service is available”, whereas claim 1 of application 09/999,378 recites “wherein the service time is a present or future time when the service is available” and thus does not include the language “a date and/or time measure indicating”. A date or a time is a measure or indication of quantity of time. For example, both May 5 and 9 AM-5 PM indicate an amount of time. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to include that a date of time is a measure indicating a present or future first date and/or time in order to more accurately account for time intervals using known and standard units.

Claims 32, 33, 34, and 35 of the current application and claims 7, 12, 17, and 22, respectively, of the copending application have the same, obvious modifications there between as claims 31 and 1. Therefore, although these conflicting claims are not identical, they are not patentably distinct from each other, as discussed above.

Claims 36-40 of the current application and claims 66-70, respectively, of the copending application are not patentably distinct from each other.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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8. Claims 31-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Campbell et al. (U.S. 5,918,209).

As per claim 31, Campbell et al. teaches a computer-based method for yield management in human factor resource industries, comprising:

accepting, via a computer, transaction parameter values for composite resources, wherein each composite resource has associated therewith at least a service location and at least one of a service date and a service time (See column 2, lines 60-67, column 3, lines 5-20, column 5, lines 42-46, which discuss composite resources. See column 5, lines 10-25 and line 50-column 6, line 10, column 8, lines line 10-30, column 19, lines 5-25, wherein the composite resource has locations (such as origins and destinations) and dates when the resource occurs. See column 6, lines 40-60, and column 7, lines 15-26, wherein transaction parameter values are accepted via the computer);

communicating at least a portion of the transaction parameter values for at least one composite resource to at least one potential user of the composite resource, the communication attempting to modify at least one of the demand for the at least one composite resource and the capacity of the at least one composite resource, wherein when the capacity exceeds demand for the at least one composite resources, the communication attempts to increase the demand for and/or decrease the capacity of the at least one composite resource (See column 2, lines 55-66, column 6, lines 40-55, column 7, lines 15-26 and 43-62, column 9, lines 25-35, column 12, lines 1-10, and column 19, lines 5-30, wherein the values are communicated and attempts to modify the capacity available by decreasing the capacity);

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wherein the at least one service date and service time is a date and/or time measure indicating a present or future first date and/or time when the service is available (See column 2, lines 55-65, column 5, lines 10-25, column 8, lines line 10-25 and 45-55, column 19, lines 5-25, wherein the composite resource has a future time when it is available);

wherein the communication occurs prior to any first assignment (See column 2, lines 60-67, column 3, lines 5-20, column 5, lines 10-25 and 42-46, column 8, lines line 10-25, column 19, lines 5-25, wherein the communication occurs prior to assignment);

wherein the capacity of the at least one composite resource is a measure of the on-hand supply and/or availability, if applicable, of the at least one composite resource at a first date and/or time plus a measure of an ability to produce and/or make available additional quantities of the at least one composite resource over a first date and/or time period beginning at the first date and/or time and ending at a second date and/or time (See column 2, lines 60-67, column 3, lines 5-20, column 5, lines 42-46, which discuss composite resources. See column 1, lines 50-65, column 7, lines 45-65, wherein capacity is a measure of on-hand availability for flight legs at specific times, plus a measure of additional quantities (i.e. "overbooking factor" that makes additional capacity available)); and

wherein the demand for the at least one composite resource is a measure of the on-hand consumption and/or utilization, if applicable, of the at least one composite resource at the first date and/or time plus a measure of an ability to consume and/or utilize additional quantities of the at least one composite resource over the first date and/or time period (See column 2, lines 60-67, column 3, lines 5-20, column 5, lines 42-46, which discuss composite resources. See column 7, lines 45-65, column 8, lines 45-60, column 9, line 40-column 10, line 10, wherein demand is a

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measure of consumption/use of the composite resources plus the expectation of additional use before the departure date/time).

However, Campbell et al. does not expressly disclose that the communication occurs prior to any first assignment of other concurrently-consumed and/or utilized composite resources to the at least one potential user.

Campbell et al. discloses communication values between a user and the system before the composite resource is granted to the user. Communicating with purchasers prior to sale and assignment of items in order to influence purchasing decisions is well-known in the marketing industry. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to communicate with the user prior to any assignment of other composite resources in order to more efficiently determine and implement the most effective set and assignment of composite resources by communicating with users prior to the assignment of resources, thus swaying their choices to meet the optimal plan determined. See column 2, lines 35-45, and column 11, lines 20-35, which disclose the importance of balancing supply and demand amongst the consumers of the composite resources.

Claim 32 is substantially similar to claim 31 and is therefore rejected using the same art and rationale set forth above.

Claim 33 recites substantially similar elements to claim 31. Therefore, teaches claim 33, as set forth above in the rejection of claim 31. Campbell et al. further teaches a storage device storing a program and a processor connected to the storage device and controlled by the program, the processor operative with the program (See figure 2A, column 6, lines 15-42, column 7, lines

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25-35 and 43-60, column 8, lines 40-65, column 9, lines 60-67, wherein the data stored in the system is accessed by the program and processed).

Claim 34 is rejected using the same art and rationale set forth above in the rejection of claim 31. Campbell et al. further teaches storing the data related to the individual resources and the associated composite resources (See column 2, line 55-column 3, line 20, column 8, line 40-column 9, line 15, wherein data is stored that associates individual resources (legs/intermediaries) with the composite resource (flight path departure/origin, intermediaries, destination));

constructing internal data structures which link each of the individual resources to associated composite resources and link each of the composite resources to associated individual resources (See column 2, line 55-column 3, line 20, column 8, line 40-column 9, line 15, wherein internal data structures are built).

Claim 35 recites substantially similar elements to claim 31. Therefore, teaches claim 33, as set forth above in the rejection of claim 31. Campbell et al. further teaches receiving a responding communication from at least one user binding the at least one composite resource with specified transaction parameter values (See column 6, lines 42-60, column 7, lines 15-26 and 45-65, column 8, lines 10-39, wherein the seat is booked via a reservation system).

As per claims 36-38 and 40, Campbell et al. teaches wherein, when demand exceeds capacity for the at least one composite resource, the communication attempts to decrease the demand for the at least one composite resource and/or increase the capacity of the at least one composite resource (See figures 7B and 11A, column 12, lines 5-15, column 14, lines 15-30 and 58-67, column 17, lines 60-65, wherein prices are determined and communicated in order to

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balance supply/capacity and demand. In situations where there is more demand than supply/capacity, the demand must be dispersed and decreased).

As per claim 39, Campbell et al. discloses indicating, when the demand for a composite resource exceeds the capacity of the composite resource, that the demand for the composite resource should be decreased and/or the capacity of the composite resource should be increased (See figures 7B and 11A, column 12, lines 5-15, column 14, lines 15-30 and 58-67, column 17, lines 60-65, wherein prices are determined and communicated in order to balance supply/capacity and demand. In situations where there is more demand than supply/capacity, the demand must be dispersed and decreased).

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

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The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Talluri (U.S. 6,263,315) discloses yield management and data structures concerning composite resources.

Dietrich et al. (U.S. 6,526,392) teaches service activities and times and a yield management system for service organizations.

Chen et al. (U.S. 6,741,969) discloses reducing excess capacity for restaurants and other industries by communicating incentives in an attempt to increase demand.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (571) 272-6737.

The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


bvd

March 6, 2006


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